

STATE OF INDIANA)

IN THE RUSH SUPERIOR COURT

)SS:

CAUSE NO. 70C011409 PL 314

COUNTY OF RUSH)

MICHAEL HARRINGTON,)

Plaintiff,)

v.)

SUMMONS

FRALEY & SCHILLING INC.,)

Defendant.)

To: Robert A Schilling
 Registered Agent for Fraley & Schilling Inc.
 1920 South State Road 3
 Rushville, IN 46173

You have been sued by the person(s) named petitioner(s)/plaintiff(s) in the above-entitled Court in Allen County, Indiana. The claim made against you is attached with this Summons.

The manner of delivering notice and the time within which to answer this claim are designated by an "x" below:

X certified mail: you or your attorney must file a written answer to the claim within twenty-three (23) days, commencing the day after you receive this summons, or judgment may be entered against you as claimed.

_____ personal service: you or your attorney must file a written answer to the claim within twenty (20) days, commencing the day after you receive this summons, or judgment may be entered against you as claimed.

An answer is considered filed when it is received in the office of the Clerk of the Rush Circuit and Superior Courts, Rush County Courthouse, Rushville, Indiana 46173. The method you choose to deliver the answer to the Clerk is up to you; however, you should be able to prove that you filed your answer. If you have a claim against the petitioner(s)/plaintiff(s) arising from the same transaction or occurrence, you must assert it in your written answer.

The date and time of any hearing requiring your attendance is shown on a Notice of Hearing attached as a separate document. Examine all pages carefully. Failure to appear may result in judgment against you as claimed. Unless documents indicate otherwise, all hearings will be held in the designated court at the Rush County Courthouse, Rushville, Indiana.

Deborah A. Richardson

Dated: 9-17-14

Clerk of Rush Circuit and Superior Courts

David M. Lutz, #14883-02
 David M. Lutz LLC
 4203 W. Jefferson Blvd.
 Fort Wayne, Indiana 46804

PRAECIPE DESIGNATING MANNER OF SERVICE

To the Sheriff - This Summons shall be served as follows:

☐ Personal Service
☐ Leaving a copy at dwelling or place of employment
☐ Agent, _____
☐ Other (describe in particular and note Trial Rule)

To the Clerk - This Summons shall be served as follows:

☐ Certified mail
☐ Registered mail
☐ Publication
☐ Other (describe in particular and note Trial Rule)

CERTIFIED MAIL

I hereby certify, as indicated in the date issued field, that a copy of this subpoena was sent to the named person(s) at the address(es) furnished, by registered/certified mail at Rushville, Indiana, the return receipt requested.

I hereby certify that service by registered/certified mail at Rushville, Indiana was attempted as required by law to the person and the address stated on the **return receipt attached**; and that services was/was not made according to the information contained therein.

Date Issued: _____

Date Returned: _____

Clerk of Circuit and Superior Courts**ADMISSION OF SERVICE**

I received a copy of this Subpoena on this date _____ and at this location:

Signature of Party Relationship (if not the within named person)

RETURN OF SERVICE BY SHERIFF OR OTHER OFFICER Place the letter in the space () to indicate the type of service.

I served a copy of this Summonses specified below: ()

READING/delivering a copy (A) to the within named party;

LEAVING A COPY for the within named party

(B) with the SPOUSE, named:

(C) with a RELATIVE, named:

(D) with a RESIDENCE, located at:

(E) with the EMPLOYER, named:

(F) with a SECRETARY named:

(G) with the ATTORNEY, named:

(H) with this person (OTHER - specify):

* Specify name of person, work supervisor, place of business, or location where copy was left.*

and (if applicable) by sending a copy of this Subpoena by first-class mail to the last known address of the within named person as indicated below:

Last Known Address of Person Named in the Subpoena (or Change of Address)

I did not serve the within Subpoena because: ()

(I) the party was NOT FOUND/NO SUCH ADDRESS.

(J) the document EXPIRED.

(K) the party AVOIDED service.

(L) the party REFUSED service.

(M) the party was NO LONGER EMPLOYED at that address.

(N) the document was RETURNED BY THE AUTHORITY OF THE PLAINTIFF.

(O) the party is DECEASED.

(P) the party was UNKNOWN AT THAT ADDRESS.

(R) the party was on VACATION

(S) the party was NOT FOUND/VACANT.

(T) the party was NOT FOUND/MOVED.

(U) the party was NOT FOUND IN THE BAILIWICK.

(V) INSUFFICIENT ADDRESS OR INFORMATION WAS GIVEN.

(W) they are NO LONGER IN BUSINESS.

(X) several attempts were made/UNABLE TO SERVE

(Y) of the following reason (OTHER - specify):

(Q) the party was on SICK LEAVE/LAY OFF.

I affirm, under penalty of perjury, that the foregoing representations are true.

Date Served/Attempted Time Served/Attempted Signature of Sheriff of Rush County, Indiana
(or other Officer)

By: _____

Printed Name of Process Server

Signature of Process Server

STATE OF INDIANA)
) SS:
COUNTY OF RUSH)

IN THE RUSH SUPERIOR COURT

CAUSE NO. ~~70C011409~~ PL 314

MICHAEL HARRINGTON,)
)
Plaintiff,)
)
v.)
)
FRALEY & SCHILLING INC,)
)
Defendant.)

FILED

SEP 17 2014

RUSH COUNTY CLERK
OF COURTS

Michael G. Richardson

COMPLAINT AND JURY DEMAND

Plaintiff, Michael Harrington, by counsel, for his Complaint against the Defendant, Fraley & Schilling Inc alleges and states as follows:

1. The Plaintiff is a United States Citizen who resides in Waterford, Pennsylvania and who at all material times, worked for the defendant Fraley & Schilling Inc.
2. The Defendant, Fraley & Schilling Inc is an Indiana corporation doing business in Rush County, Indiana and employs 20 or more employees on more than 50 per cent of its typical business days in the previous calendar year making it subject to COBRA.
3. The Defendant employed the Plaintiff and had a duty to provide Plaintiff worker's compensation benefits for his work-related injury, and had the additional duty to refrain from terminating Plaintiff because he asserted his right to worker's compensation benefits under the Indiana Worker's Compensation Act.
4. Plaintiff injured himself on or about July 24, 2012, while working for the Defendant, an injury which arose out of and in the scope of Plaintiff's employment with Defendant; Plaintiff received severe injuries to his head, face, right hip, and both wrists as a result of the work-related incident. Plaintiff requested medical treatment for his injuries, thereby implicating his rights under

the Indiana Worker's Compensation Act.

5. Plaintiff clearly requested and articulated that the work-related incident be treated as a worker's compensation accident and requested all benefits available under the Indiana Worker's Compensation Act. Defendant provided medical care to plaintiff and treated his injuries as compensable.

6. Defendant terminated plaintiff's employment at some point in early October 2012.

7. Plaintiff contends that Defendant's termination of his employment is in violation of the public policies and tort laws of the State of Indiana, that the termination was retaliatory and intended to harm Plaintiff for becoming injured and expressing his intent to collect worker's compensation benefits; the actions of Defendant were intentional and in reckless disregard of Plaintiff's rights to assert a worker's compensation claim and receive worker's compensation benefits without fear of being terminated.

8. As a result of the retaliatory termination of the Plaintiff, Plaintiff has suffered the loss of his job and job-related benefits including income; additionally, Plaintiff has suffered and continues to suffer from physical pain, mental anguish, emotional distress, financial hardship, anxiety, frustration, and other damages and injuries caused by his wrongful/retaliatory termination.

9. Additionally, defendant considered plaintiff an employee up to and thru September 19, 2012. Defendant took a payroll deduction from plaintiff for his health insurance premium thru that date.

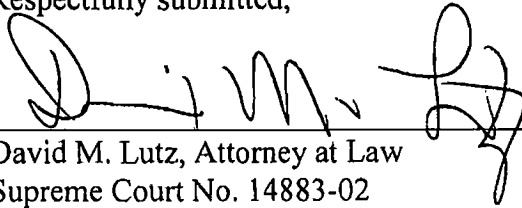
10. In October 2012, after his termination, plaintiff learned that his health insurance was cancelled on August 2, 2012.

11. Plaintiff did not receive COBRA notification as required by 29 USC Section 1132(c)(1). Defendant is subject to ERISA 3502 (c) (). The penalty for failure to do notify

constitutes a \$110.00 a day fine along with the health care costs and expenses plaintiff sustained.

WHEREFORE, Plaintiff prays for judgment against the Defendant, for compensatory damages, pecuniary damages, punitive damages, prejudgment interest, reasonable costs of the action, and for all other just and proper relief in the premises.

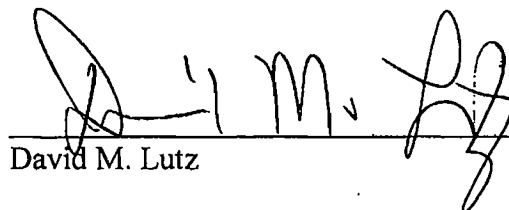
Respectfully submitted,

A handwritten signature in black ink, appearing to read 'D. M. Lutz', is written over a horizontal line.

David M. Lutz, Attorney at Law
Supreme Court No. 14883-02
4203 West Jefferson Blvd.
Fort Wayne, Indiana 46804
(260) 432-3700
ATTORNEY FOR PLAINTIFF

JURY DEMAND

Pursuant to Rule 38 of the Indiana Rules of Trial Procedure, Plaintiff demands a trial
by jury in this action.

A handwritten signature in black ink, appearing to read 'D. M. Lutz', is written over a horizontal line.

David M. Lutz

STATE OF INDIANA)
) SS:
COUNTY OF RUSH)

IN THE RUSH SUPERIOR COURT

CAUSE NO. 70C011409 PL 314

MICHAEL HARRINGTON,)
)
Plaintiff,)

vs.)

FRALEY & SCHILING INC.,)
)
Defendant.)

FILED

SEP 17 2014

RUSH COUNTY CLERK
OF COURTS

Robert A. Richardson

APPEARANCE BY ATTORNEY IN CIVIL CASE

Party Classification: Initiating X Responding ___ Intervening ___

1. The undersigned attorney and all attorneys listed on this form now appear in this case for the following party member(s): Michael Harrington, Plaintiff.
2. Applicable attorney information for services as required by Trial Rule 5(B)(2) and for case information as required by Trial Rules 3.1 and 77(B) is as follows:

David M. Lutz
4203 W. Jefferson Blvd.
Fort Wayne, IN 46804

Atty. No. 14883-02
Tel. (260) 432-3700
Fax. (260) 432-3707

3. There are other party members: Yes ___ No X
4. If first initiating party filing this case, the Clerk is requested to assign this case the following Case Type under Administrative Rule 8(b)(3): PL.
5. I will accept service by FAX at the above number: No
6. This case involves support issues: Yes ___ No X
(if yes, supply social security numbers for all family members on continuation page.)
7. There are related cases: Yes ___ No X
8. This form has been served on all other parties. Certificate of Service is attached: Yes X No ___
9. Additional information required by local rule: _____

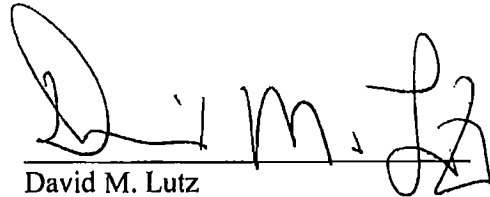
Dated: 9-17-14


David M. Lutz

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing appearance was served upon all parties of record, via U.S. Mail, Certified, Return Receipt Requested, this 17th day of September, 2014.

Robert A Schilling
Registered Agent for Fraley & Schilling Inc.
1920 South State Road 3
Rushville, IN 46173



David M. Lutz

STATE OF INDIANA) IN THE RUSH CIRCUIT COURT
) SS:
COUNTY OF RUSH) CAUSE NO. 70C01-1409-PL-314

MICHAEL HARRINGTON,)
)
 Plaintiff,)
)
 v.)
)
FRALEY & SCHILLING, INC.,)
)
 Defendant.)

APPEARANCE BY ATTORNEY IN CIVIL CASE

This Appearance Form must be filed on behalf of every party in a civil case.

1. The party on whose behalf this form is being filed is:

Initiating _____ Responding X _____ Intervening _____ ; and

the undersigned attorney and all attorneys listed on this form now appear in this case for the following parties:

Name of party: Fraley & Schilling, Inc.

2. Attorney information for service as required by Trial Rule 5(B)(2)

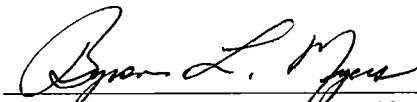
Name: Byron L. Myers Atty Number: 9405-49
Address: Ice Miller LLP, One American Square, Suite 2900
 Indianapolis, IN 46282-0200
Phone: (317) 236-2367
FAX: (317) 592-4715
Email Address: Byron.Myers@icemiller.com

(List on continuation page additional attorneys appearing for above party)

3. This is a PL case type as defined in administrative Rule 8(B)(3).
4. I will accept service by:
 FAX at the above noted number: Yes _____ No X _____
 Email at the above noted number: Yes _____ No X _____
5. This case involves child support issues. Yes _____ No X _____

6. This case involves a protection from abuse order, a workplace violence restraining order, or a no – contact order. Yes ____ No X
7. This case involves a petition for involuntary commitment. Yes ____ No X
8. There are related cases: Yes ____ No X (If yes, list on continuation page.)
9. Additional information required by local rule:

10. There are other party members: Yes ____ No X (If yes, list on continuation page.)
11. This form has been served on all other parties and Certificate of Service is attached:
Yes X No ____

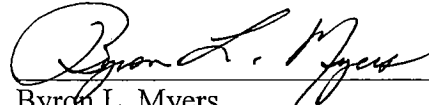


Byron L. Myers, Atty. No. 9405-49
Attorney for Defendant

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing has been deposited in the U.S. mail, first class postage prepaid, on the 6th day of October, 2014, addressed to:

David M. Lutz
David M. Lutz LLC
4203 W. Jefferson Blvd.
Fort Wayne, IN 46804



Byron L. Myers
Attorney No. 9405-49

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One American Square, Suite 2900
Indianapolis, IN 46282-0200
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(317) 592-4715 Fax
Byron.Myers@icemiller.com

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